

**BRIAN L. HOFFER**  
**RANDY J. SPITAELS**  
KINDIG & SLOAT  
Nappanee, IN

**STEVE CARTER**  
ATTORNEY GENERAL OF INDIANA

**LINDA I. VILLEGAS**  
DEPUTY ATTORNEY GENERAL  
Indianapolis, IN

**IN THE  
INDIANA TAX COURT**

JAMES L. HARTMAN,

Petitioner,

V.

Cause No. 71T10-0112-TA-99

DEPARTMENT OF LOCAL  
GOVERNMENT FINANCE,<sup>1</sup>

Respondent.

ON APPEAL FROM A FINAL DETERMINATION OF  
THE STATE BOARD OF TAX COMMISSIONERS

**NOT FOR PUBLICATION**

December 16, 2005

FISHER, J.

<sup>1</sup> The State Board of Tax Commissioners (State Board) was originally the Respondent in this appeal. However, the legislature abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), see Indiana Code § 6-1.1-30-1.1 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 66, and the Indiana Board of Tax Review (Indiana Board). IND. CODE ANN. § 6-1.5-1-3 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002. IND. CODE ANN. § 6-1.5-5-8 (West Supp. 2005-2006)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Nevertheless, the law in effect prior to January 1, 2002 applies to these appeals. A.I.C. § 6-1.5-5-8. See also 2001 Ind. Acts 198 § 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

James L. Hartman (Hartman) appeals the final determination of the State Board of Tax Commissioners (State Board) valuing his real property for the 2000 assessment year (year at issue). The issue on appeal is whether additional obsolescence depreciation should be applied to Hartman's property.<sup>2</sup> For the following reasons, the Court now AFFIRMS the State Board's final determination.

### **FACTS AND PROCEDURAL HISTORY**

Hartman owns real property (subject property) in Elkhart County, Indiana. The subject property was once a bank and data center; however, Hartman leases the commercial space, making modifications to the space as necessary. For the year at issue, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) applied a 32% obsolescence depreciation adjustment to Hartman's improvement.

Hartman timely filed a Petition for Review of Assessment (Form 131) with the State Board, arguing that his property was entitled to a seventy-three percent (73%) obsolescence depreciation adjustment. The State Board held an administrative hearing on Hartman's Form 131 on March 22, 2001. On October 30, 2001, the State Board issued its final determination, denying Hartman's request for relief.

On December 13, 2001, Hartman initiated an original tax appeal. The Court heard the parties' oral arguments on January 31, 2003. Additional facts will be supplied as necessary.

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<sup>2</sup> Hartman also raised various state and federal constitutional claims that this Court has declined to reach in previous cases. See, e.g., *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1127 n.1 (Ind. Tax Ct. 2001). Because Hartman's claims and supporting arguments are identical to those previously rejected by the Court, the Court will not address them.

## **ANALYSIS AND OPINION**

### **Standard of Review**

This Court gives great deference to the final determinations of the State Board when it acts within the scope of its authority. *Hamstra Builders, Inc. v. Dep't of Local Gov't Fin.*, 783 N.E.2d 387, 390 (Ind. Tax Ct. 2003). Thus, this Court will reverse a final determination of the State Board only when its findings are unsupported by substantial evidence, arbitrary, capricious, constitute an abuse of discretion, or exceed statutory authority. *Id.* When appealing to this Court from a State Board final determination, the taxpayer bears the burden of showing that the final determination is invalid. *Id.*

### **Discussion**

“Obsolescence, which is a form of depreciation, is defined as a loss of value and classified as either functional or economic.” *Freudenberg-NOK Gen. P'ship v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1026, 1029 (Ind. Tax Ct. 1999), *review denied*. See also IND. ADMIN CODE tit. 50, r. 2.2-10-7(e) (1996). Functional obsolescence is caused by factors internal to the property and is evidenced by conditions within the property itself. See 50 IAC 2.2-10-7(e). Economic obsolescence is caused by factors external to the property. *Id.*

To receive an adjustment for obsolescence, a taxpayer must: 1) identify the causes of obsolescence present in its improvement; and 2) quantify the amount of obsolescence to which it believes it is entitled. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). For the year at issue, Hartman's improvement received a 32% obsolescence depreciation adjustment. (See Cert. Admin. R. at 76.) Because the PTABOA obviously agreed that causes of obsolescence existed within

Hartman's improvement,<sup>3</sup> Hartman bore the burden of presenting evidence at the State Board hearing quantifying the amount of obsolescence to be applied to his improvement.

To support his claim for 73% obsolescence depreciation, Hartman presented an "Assessment Review and Analysis" (Analysis) in which he submitted his calculations quantifying obsolescence. (See Cert. Admin R. at 59-73.) Specifically, the calculations are as follows: (1) the sales price of the property in December 1998 (\$300,000)<sup>4</sup> less the true tax value of the land (\$57,500) equals the sales price of the improvement (\$242,500); (2) the true tax value of the improvement (i.e., reproduction cost of the improvement minus physical depreciation) (\$899,830) less the sales price of the improvement (\$242,500) equals the obsolescence loss in value (\$657,330); (3) the obsolescence loss in value (\$657,330) divided by the true tax value (\$899,830) equals the percent of obsolescence depreciation (73%). (Cert. Admin. R. at 62, 135; Pet'r Br. at 2-3.) Hartman's quantification, however, is erroneous.

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<sup>3</sup> By awarding the initial 32% obsolescence adjustment, the PTABOA agreed that obsolescence was present in Hartman's improvements. Therefore, quantification of obsolescence, not the identification of causes thereof, is the issue here. See *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1102 (Ind. Tax Ct. 1999) (stating that the fact that parties agree on causes of obsolescence "obviates [the taxpayer's] burden of offering probative evidence showing that the subject improvements experience obsolescence"), *review denied*.

<sup>4</sup> Hartman asserts that the price he paid for the property (\$300,000) was the property's fair market value. (See Pet'r Br. at 2 (arguing that the purchase of the property was an "arm's length, negotiated business transaction").) While the State Board claims Hartman did not support this assertion with evidence, the Court need not resolve the issue because the basis of its decision today rests on other grounds. For purposes of this opinion, therefore, the Court will regard the sale price as fair market value.

The difference between the true tax value of the property and sales price of the property (market value) does not demonstrate a loss in value because the two numbers are not comparable. See *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1038 (Ind. 1998) (holding that "true tax value" is not exclusively or necessarily identical to fair market value). Indeed, a property's true tax value is the value determined under the rules of the State Board, not the forces of the market. See IND. CODE ANN. § 6-1.1-31-6 (c) (West 2000) (amended 2002) ("[t]rue tax value does not mean fair market value"). Consequently, the difference between the true tax value of Hartman's property and the price Hartman paid for the property, two unrelated numbers, does not demonstrate that there has been a loss in value of the subject improvement. See *Loveless Constr. Co. v. State Bd. of Tax Comm'rs*, 695 N.E.2d 1045, 1050 (Ind. Tax Ct. 1998) (stating that the obsolescence of an improvement is tied to the loss of the improvement's income generating ability; income generating ability is measured in real dollars, not true tax value dollars), *review denied*. Thus, Hartman has not presented probative evidence quantifying obsolescence. Therefore, a prima facie case has not been established entitling Hartman to additional obsolescence.<sup>5</sup>

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<sup>5</sup> In addition, Hartman claims that the State Board erred when it declined to consider his evidence rebutting the PTABOA's use of a vacancy factor in its obsolescence calculation. (See Pet'r Br. at 4-6.) This Court, however, has held that it will not consider taxpayer complaints concerning obsolescence in cases where the State Board holds administrative hearings after April 24, 1998, "unless the taxpayer has identified the causes of the alleged obsolescence and presented probative evidence that would support a quantification of obsolescence at the administrative level." *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Hartman did not present the requisite evidence; thus, the Court does not reach Hartman's rebuttal evidence.

The Court also notes Hartman's disagreement with the *Clark* standard. (See Pet'r Br. at 6-10 (arguing that the lack of ascertainable standards in the regulations prevents taxpayers from presenting required evidence to challenge an assessment;

## CONCLUSION

Because Hartman failed to make a prima facie case quantifying the amount of obsolescence he sought, the State Board's duty to support its quantification with substantial evidence was not triggered. Thus, the Court AFFIRMS the State Board's final determination.

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therefore, the *Clark* standard is unfair).) Nevertheless, the Court addressed this issue in the very opinion announcing the standard. See *Clark*, 694 N.E.2d at 1242 n.18.

Specifically, the Court stated:

[T]hose familiar with the [t]rue [t]ax [v]alue system will wonder how one is supposed to quantify obsolescence because the regulations provide no specific guidance on how obsolescence is to be quantified. However, the regulations 'tie the definition of obsolescence directly to that applied by professional appraisers under the cost approach[.]' Therefore, using generally recognized appraisal methods for quantifying obsolescence is a permissible means of [doing so.]

*Id.* (internal citation omitted).